MONTANA LEGISLATIVE HISTORY

Chapter 461 19 85

Bill H _____ S 95 Original bill & history ✓C

H. Committee on Business & Labor		S. Committee on Labor & Employment	
Hearing Date(s) 3/7	✓C	Hearing Date(s) 1/17	✓C
3/26	✓C	_____	___C
_____	___C	_____	___C
_____	___C	_____	___C
Date Out _____	___C		

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

SENATE BILL NO. 95

INTRODUCED BY LYNCH

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

IN THE SENATE

January 11, 1985	Introduced and referred to Committee on Labor and Employment Relations.
January 18, 1985	Committee recommend bill do pass. Report adopted.
January 19, 1985	Bill printed and placed on members' desks.
January 21, 1985	Second reading, do pass.
January 22, 1985	Considered correctly engrossed.
January 23, 1985	Third reading, passed. Ayes, 48; Noes, 1.
	Transmitted to House.

IN THE HOUSE

January 24, 1985	Introduced and referred to Committee on Business and Labor.
March 26, 1985	Committee recommend bill be concurred in. Report adopted.
March 30, 1985	Second reading, concurred in.
April 1, 1985	Third reading, concurred in.
	Returned to Senate.

IN THE SENATE

April 1, 1985 Received from House.

Sent to enrolling.

Reported correctly enrolled.

Senate BILL NO. 95

INTRODUCED BY _____

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT TO CONFORM TO FEDERAL LAW THE PROVISIONS OF THE UNEMPLOYMENT INSURANCE LAW RELATING TO THE SOURCE OF FUNDS FOR DEPARTMENT ADMINISTRATIVE EXPENSES; AMENDING SECTIONS 39-51-201 AND 39-51-404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-51-201, MCA, is amended to read:

"39-51-201. General definitions. As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) The word "administrator" refers to a person appointed by the commissioner of labor and industry to direct and administer the unemployment insurance laws and federal laws falling within the administrator's jurisdiction.

(2) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.

(3) "Annual total payroll" means the total of the four quarters of total payrolls of an employer preceding the

computation date as fixed herein.

(4) "Base period" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period shall be that applicable under the unemployment law of the paying state. For an individual who fails to meet the qualifications of 39-51-2105 due to a temporary total disability as defined in 39-71-116 or a similar statute of another state or the United States, the base period means the first four quarters of the last five quarters preceding the disability if a claim for unemployment benefits is filed within 18 months of the individual's last employment.

(5) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to his unemployment.

(6) "Benefit year", with respect to any individual, means the 52 consecutive-week period beginning with the first day of the calendar week in which such individual files a valid claim for benefits, except that the benefit year shall be 53 weeks if filing a new valid claim would result in overlapping any quarter of the base year of a previously filed new claim. A subsequent benefit year may

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not be established until the expiration of the current benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state.

(7) "Board" means the board of labor appeals provided for in Title 2, chapter 15, part 17.

(8) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(9) "Contributions" means the money payments to the state unemployment insurance fund required by this chapter but does not include assessments under 39-51-404(4).

(10) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(11) "Employing unit" means any individual or organization, including the state government, any of its political subdivisions or instrumentalities, any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person which has or subsequent to January 1, 1936, had in its employ one or more individuals performing services for it within this state, except as provided under

subsections (8) and (9) of 39-51-203. All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state are considered to be employed by a single employing unit for all the purposes of this chapter. Each individual employed to perform or assist in performing the work of any agent or employee of an employing unit is deemed to be employed by such employing unit for the purposes of this chapter, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit has actual or constructive knowledge of the work.

(12) "Employment office" means a free public employment office or branch thereof operated by this state or maintained as a part of a state-controlled system of public employment offices or such other free public employment offices operated and maintained by the United States government or its instrumentalities as the department may approve.

(13) "Fund" means the unemployment insurance fund established by this chapter to which all contributions and payments in lieu of contributions are required and from which all benefits provided under this chapter shall be paid.

(14) "Gross misconduct" means a criminal act, other

than a violation of a motor vehicle traffic law, for which an individual has been convicted in a criminal court or has admitted or conduct which demonstrates a flagrant and wanton disregard of and for the rights or title or interest of a fellow employee or his employer.

(15) "Hospital" means an institution which has been licensed, certified, or approved by the state as a hospital.

(16) (a) "Institution of higher education", for the purposes of this part, means an educational institution which:

(i) admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of such a certificate;

(ii) is legally authorized in this state to provide a program of education beyond high school;

(iii) provides an educational program for which it awards a bachelor's or higher degree or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(iv) is a public or other nonprofit institution.

(b) Notwithstanding any of the foregoing provisions of this subsection, all colleges and universities in this state are institutions of higher education for purposes of this

part.

(17) "State" includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and the Dominion of Canada.

(18) "Unemployment insurance administration fund" means the unemployment insurance administration fund established by this chapter from which administrative expenses under this chapter shall be paid.

(19) (a) "Wages" means all remuneration payable for personal services, including commissions and bonuses and the cash value of all remuneration payable in any medium other than cash. The reasonable cash value of remuneration payable in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the department.

(b) The term "wages" does not include:

(i) the amount of any payment made to or on behalf of an employee by an employer on account of:

(A) retirement;

(B) sickness or accident disability;

(C) medical and hospitalization expenses in connection with sickness or accident disability; or

(D) death;

(ii) remuneration paid by any county welfare office from public assistance funds for services performed at the

direction and request of such county welfare office.

(20) "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

(21) An individual's "weekly benefit amount" means the amount of benefits he would be entitled to receive for 1 week of total unemployment."

Section 2. Section 39-51-404, MCA, is amended to read:

"39-51-404. Administrative expenses. (1) Money credited to the account of this state in the unemployment trust fund by the secretary of the treasury of the United States pursuant to section 903 of the Social Security Act, as amended, may be requisitioned and used for the payment of expenses incurred for the administration of this chapter pursuant to a specific appropriation by the legislature, provided that the expenses are incurred and the money is requisitioned after the enactment of an appropriation law which:

(a) specifies the purposes for which such money is appropriated and the amounts appropriated therefor;

(b) limits the period within which such money may be expended to a period ending not more than 2 years after the date of the enactment of the appropriation law; and

(c) limits the amount which may be used during any 12-month period beginning on July 1 and ending on the next June 30 to an amount which does not exceed the amount by

which the aggregate of the amounts credited to the account of this state pursuant to section 903 of the Social Security Act, as amended, during the same 12-month period and the 34 preceding 12-month periods exceeds the aggregate of the amounts used pursuant to this section and charged against the amounts credited to the account of this state during any of such 35 12-month periods.

(2) For the purposes of this section, amounts used during any such 12-month period shall be charged against equivalent amounts which were first credited and which are not already so charged, except that no amount used for administration during any such 12-month period may be charged against any amount credited during such a 12-month period earlier than the 34th preceding such period. Money requisitioned for the payment of expenses of administration pursuant to this section shall be deposited in the unemployment insurance administration account but, until expended, shall remain a part of the unemployment insurance fund.

(3) The department shall maintain a separate record of the deposit, obligation, expenditure, and return of funds so deposited. If any money so deposited is for any reason not to be expended for the purpose for which it was appropriated or, if it remains unexpended at the end of the period specified by the law appropriating such money, it shall be

withdrawn and returned to the secretary of the treasury of the United States for credit to this state's account in the unemployment trust fund.

(4) Beginning with the third quarter of 1983, an assessment equal to .1% of ~~employer-contributions-received by--the--department~~ all taxable wages provided for in 39-51-1108 and .05% of total wages paid by employers not covered by an experience rating must be levied against and paid by all employers and may be used by the department for administrative purposes. All such ~~contributions~~ assessments must be deposited in the unemployment insurance administration account provided for in 39-51-406 and used as appropriated by the legislature. Any ~~contributions~~ assessments deposited to the unemployment insurance administration account that are not appropriated by the legislature must be transferred to the unemployment trust fund account provided for in 39-51-402."

NEW SECTION. Section 3. Effective date. This act is effective on passage and approval.

-End-

MINUTES OF THE MEETING
LABOR & EMPLOYMENT RELATIONS COMMITTEE
MONTANA STATE SENATE

January 17, 1985

The third meeting of the Labor and Employment Relations Committee was called to order by the chairman J.D. Lynch on January 17, 1985, at 1:00 p.m. in Room 413/415, State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF SENATE BILL 95:

Vice-Chairman Manning called on Chairman Lynch, sponsor of Senate Bill 95. Chairman Lynch explained Senate Bill 95. Senate Bill 95 is a request by the Department of Labor and Industry, to change some technicalities in our law to conform with federal law. (Exhibit No. 1) Chairman Lynch also stated it is a housekeeping bill.

PROPONENTS OF SENATE BILL 95:

Dave Wanzenried, Commissioner of the Department of Labor and Industry, rose in support of Senate Bill 95.

OPPONENTS OF SENATE BILL 95:

None were present.

QUESTIONS FROM THE COMMITTEE:

Senator Towe asked Mr. Wanzenried, what is the 5%, and what is the 5% right after it. It is on page nine, and says "an assessment equal to .1% of all taxable wages provided for in 39-51-1105 and .05% of all total wages paid by employers not covered by an experience rating." Senator Towe asked why there is a difference?

David Wanzenried replied that the .5% refers to reimbursable employers, government sector employers not covered by trust funds. They are totally separate systems set up for reimbursable employers, hosiptals in somecases, and other government sector employers. It is totally separate from accounting basis.

Senator Towe asked, why we have a different amount than the federal government.

Harold Kansier, representing the Department of Labor, said the reason for that is the experienced rated employers pay on taxable wages, government entities pay on total wages. The .05% is assessed against taxable wages.

Senator Thayer asked Chairman Lynch why he had deleted the language, "employer contributions received" and changed the language to, "all taxable wages provided for in 39-51-1108." He said he didn't understand what that is.

Chairman Lynch replied that in line 7, total wages is used because .05% applies to government entities, who pay us on the basis of total wages rather than taxable wages. In establishing the .05%, it was determined that government entities and reimbursables would be in affect paying about the same amount as experienced rate employers pay on the basis of the law that defines taxable wages and establishes a 75% average annual rate not to exceed $200 a year increase.

EXECUTIVE ACTION OF SENATE BILL 95:

Senator Manning made a motion that Senate Bill 95 Do Pass. On a voice not, the Committee voted UNANIMOUSLY THAT SENATE BILL 95 DO PASS.

CONSIDERATION OF SENATE BILL 75:

Chairman Lynch called on Senator Aklestad, sponsor of Senate Bill 75. Senate Bill 75 is an act to exempt local government from wage standards prevailing rate of wages on local projects in which only local government funds are used. Senator Aklestad said the bill does not pertain to the Davis-Bacon Act, where federal funds are used. He said the committee is all aware of the problem we have which is called the Little Davis-Bacon Act, where the prevailing wage is used in local government. It has held up, and is continuing to hold up, projects within local government.

PROPONENTS OF SENATE BILL 75:

Bill Olsen, representing Montana Contractors Association, Secretary, submitted written testimony in support of Senate Bill 75. (Exhibit No. 2)

Gordon Morris, representing Montana Association of Counties, Director, submitted written testimony in support of Senate Bill 75. (Exhibit No. 3)

Chip Erdmann, representing Montana School Boards Association, submitted written testimony in support of Senate Bill 75. (Exhibit No. 4)

Bob Kinna, representing Wolf Point School District 45, Superintendent, submitted written testimony in support of Senate Bill 75. (Exhibit No. 5)

Jim Holverson, County Commissioner and taxpayer in Roosevelt County, said he didn't want to be repetious so he simply used a comparison: when we as individuals hire somebody to do repair, maintenance or even construct a home or business, we normally pay the wage that is given consistent with the given area, which is merely what local governments are asking for here, that they pay a wage that is consistent with the area.

MINUTES OF THE MEETING
BUSINESS AND LABOR COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

March 7, 1985

The meeting of the Business and Labor Committee was called to order by Chairman Bob Pavlovich on March 7, 1985 at 9:00 a.m. in Room 312-2 of the State Capitol.

ROLL CALL: All members were present.

SENATE BILL 95: Hearing commenced on Senate Bill 95. Senator J.D. Lynch, District #34, sponsor of the bill by request of the Department of Labor and Industry, explained that this is a conformity bill. The word contribution is changed to assessment to conform with the federal statute.

Proponent Dave Wanzenried, Commissioner, Department of Labor and Industry, stated this is a requirement of the federal government. In 1983 the legislature gave the department the authority to set aside 1/10 of 1% of contributions to be used for job service funding if needed. This must be called an assessment rather than a contribution. There will be no change in tax liability to employees, added Mr. Wanzenried.

Representative Glaser questioned Dave Wanzenried as to the formula change, based on contributions $67,000 would be collected and based on taxable wages 2.5 million dollars would be set aside. Mr. Wanzenried referred the question to Harold Kansier of the department. Mr. Kansier explained that the intent in 1983 was to take 1/10 of 1% of taxable wages not contributions.

Representative Glaser then asked Mr. Kansier how the money gets back into the state. Mr. Kansier stated that all money goes to the U.S. Treasury Fund in Washington D.C. When money is needed to pay unemployment benefits, an order is sent to Washington D.C. daily for the amount that is needed. Representative Glaser added that the issue is not money for benefits, but for administrative purposes. Mr. Kansier stated that the money stays in Helena for six months and if it is not needed for administrative purposes it must be used for benefits and is sent to Washington D.C.

Representative Brandewie asked if House Bill 284 is passed, will employers be paying on $11,800, to which the answer was yes. He then asked Mr. Kansier what the dollar difference will be if Senate Bill 95 is passed. Mr. Kansier explained

that there will not be a dollar difference, the department has never taxed on 1/10 of 1% of contributions, it was an error in legislation.

Rep. Wallin asked Mr. Kansier what 1/10 of 1% was the figure chosen. Mr. Kansier explained that this figure will enable Montana job service, to keep their 26 offices that are currently in the state.

Rep. Jones asked Dave Wanzenried if the department has been collecting money as interpreted rather than as written in the bill there has been an over collection and the money should be returned. Mr. Wanzenried explained that the money paid in would have been the same figure regardless of, how it was interpreted.

Representative Kitselman asked Mr. Kansier if the department attempted to go through the legislative code commissioner, rather than seeking an attorney general opinion. Mr. Kansier stated that they did go through the code commissioner, but Washington D.C. wouldn't consider this unless an attorney generals opinion was rendered.

Representative Kitselman then asked if the attorney general made his decision on the agencies intent, not the legislatures. Mr. Kansier explained that the attorney generals opinion was also based on testimony presented before the house and senate business committees.

Representative Brandewie asked Dave Wanzenried how many times the money has been needed for administrative purposes. Mr. Wanzenried explained that they have never used the money for other than benefits and if they had, the deficit would be greater than it is presently.

Representative Kitselman asked Mr. Kansier if the money held in Helena draws interest and what the interest is used for. Mr. Kansier explained that the interest remains in Helena, currently and that it must be used for job service funding.

Representative Glaser asked Mr. Wanzenried if his figures are correct, Norwest Bank in Helena is holding approximately one quarter of a million dollars. Mr. Wanzenried stated he would provide the committee with the figures.

There being no further discussion by proponents and no opponents present, the hearing was closed on Senate Bill 95.

ACTION ON HOUSE JOINT RESOLUTION 41: Representative Thomas moved DO PASS on House Joint Resolution 41. Representative Glaser stated lines 8 and 9 may jeopardize the sale of wheat to the mainland and moved to amend, striking lines 8 and 9. Representative Wallin explained this is worded identically to other states resolutions and would like to leave the language in. Representative Ellerd agreed. Representative Glaser stated the president would not even make this comment and that it will get mainland China excited. A roll call vote resulted in 10 members voting yes and 9 members voting no. Representative Glasers amendment does pass. Representative Thomas stated we should not send this resolution now. Other states have included this language and we could be offending Taiwan now. Taiwan does lots of business with Montana and they could be insulted. Representative Ellerd stated this is not aimed at mainland China at all and made a motion that the committee reconsider their previous action. Representative Glaser stated we should take both sides and want to trade with both. Representative Thomas said the defense provision will appeal to Taiwan and this is the most important and primary issue. Representative Kadas added this may lead to the "sell food, sell guns" issue. Question being called to Representative Ellerds motion, a roll call vote resulted in 9 members voting yes and 10 members voting no. House Joint Resolution 41 will BE ADOPTED by unanimous vote.

ACTION ON SENATE BILL 340: Representative Bachini moved DO PASS on Senate Bill 340. Second was received, Senate Bill 340 will BE CONCURRED IN by unanimous vote.

ACTION ON SENATE BILL 423: Representative Brandewie moved DO PASS on Senate Bill 423. Second was received, Senate Bill 423 will BE CONCURRED IN with all but Representative Wallin voting yes.

ACTION ON SENATE BILL 95: Representative Driscoll moved DO PASS on Senate Bill 95. Representative Kitselman explained the Department of Labor will roll the money over to the unemployment fund. Representative Simon asked if the department has looked at this policy as it may not be maximizing the interest. Representative Glaser asked Dave Wanzenried, Commissioner, Department of Labor and Industry if he concurs with the findings. Mr. Wanzenried said he did and the reasons for not transferring the money was that this allows them to draw interest on

interest and there was question as to whether the state can be billed for collecting for job service assessments. Representative Schultz asked Mr. Wanzenried if the money will end up in Washington D.C. He explained that it will when it is in the best interest. The department will hold the money for as long as they need to and it is to the advantage of both the state and employers not to transfer the money. Representative Brandewie asked Dave Wanzenried what the rate of interest is. Mr. Wanzenried called on Harold Kansier, who explained that it is in a money market investment and draws between 8 and 9 percent. Question being called, Senate Bill 95 will BE CONCURRED IN by unanimous vote.

ACTION ON SENATE BILL 281: Representative Kadas moved DO PASS on Senate Bill 281. Second was received, Senate Bill 281 will BE CONCURRED IN with all but Representatives Driscoll and Pavlovich voting yes.

ACTION ON SENATE BILL 402: Representative Kadas moved DO PASS on Senate Bill 402 and then withdrew his motion.

ADJOURN: There being no further business before the committee, the meeting was adjourned at 10:00 a.m.

Rep. Bob Pavlovich,
Chairman